Case Name:

R. v. Farokhshadfar

Between
Her Majesty the Queen, and
Pegah Farokhshadfar

[2001] O.J. No. 6015

Ontario Court of Justice
Toronto, Ontario
Libman J.

Oral judgment: April 6, 2001.
(8 paras.)

Counsel:

J. MacPherson, for the Crown.
O. Chambers, agent for the accused.

¶ 1 **LIBMAN J.** (orally):— The issue here involved an allegation that the defendant's rights to have a speedy trial, protected by section 11(b) of the Charter, were violated.

¶ 2 The matter was argued before Justice of the Peace Ng in Scarborough. But, in my respectful opinion, his decision in upholding the period of delay proceeded on an erroneous basic. While he recognized that a period of 14 months was on the long side, he then went on to determine the matter on the basis that there was not sufficient prejudice to stay the matter. In so doing, in my opinion, with respect, an error informed the analysis.

¶ 3 The issue of prejudice is only one factor to take into account. Here there was a serious systemic issue that arose in the following circumstances. After being charged with this Part I offence, on 13 September of 1999, the defendant filed a Notice of Intention to Appear on 1 October 1999. The next thing that happened was that a Notice of Trial was issued by the court office in Scarborough not until 10 August of 2000. This was a very significant period of delay.

¶ 4 The defendant was then given a trial for the 23rd day of November, resulting in the total delay of 14 months and ten days. However, during the course of the argument, Justice of the Peace Ng's attention was not drawn to the provisions of section 5 sub 2 of the Provincial Offences Act governing the giving of the Notice of Trial.

¶ 5 The section is instructive in it's wording given that the Clerk of the Court has the obligation, quote, "as soon as is practicable", quote, "to give notice to the defendant and prosecutor of the time and place of trial."

Justice Howden held in Regina v. Kwoon (1999), 50 M.V.R. (2d) 94 that, "there is no power conferred upon a Justice of the Peace to quash a certificate of offence due to administrative laxity or delay", as he put it under section 5(2). However, he noted that the rights of the defendant to be tried within a reasonable time are protected by section 11(b) of the Charter. And that any administrative delay in giving the Notice of Trial can be taken into account in that manner.

¶ 6 Clearly, here, a period of delay of almost 10 months in sending out a single piece of paper indicating a Notice of Trial, when the defendant is required to give intention to elect a trial mode within 15 days is manifestly excessive.

¶ 7 It follows, in my respectful opinion, that the period of systemic delay here was prima facie excessive. The prosecution was required to justify the period of excessive delay and this was not done. Rather the matter proceeded by virtue of whether or not prejudice had been shown to this defendant. While I've been advised by the course of Ms. MacPherson's oral argument that what occurred here falls more into the category of an error as opposed to an administrative practice that continues, it's quite clear that such a practice cannot be tolerated.

¶ 8 The very short time lines that govern under the Provincial Offences Act make it clear that speedy justice is the hallmark of proceedings under this Act. And the period of delay here resulted, in my opinion, in violation of the defendant's Charter of Rights, whether or not the Justice of the Peace was satisfied that prejudice was apparent or not. For these reasons, the ruling cannot stand and there will be a verdict of acquittal imposed on appeal.

QL UPDATE: 20031123 cp/s/np/qw/qlsty/qlmhg/qldrk/qlbrl